

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department on its own motion into the appropriate regulatory plan to succeed price cap regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' retail intrastate telecommunications services in the Commonwealth of Massachusetts

DTE 01-31

**MOTION OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC.  
TO COMPEL DISCOVERY RESPONSES BY VERIZON MASSACHUSETTS,  
OR, IN THE ALTERNATIVE,  
AT&T'S MOTION TO STRIKE TESTIMONY  
OF ROBERT MUDGE AND WILLIAM E. TAYLOR**

AT&T Communications of New England, Inc. ("AT&T") requests that the Department of Telecommunications and Energy (the "Department") compel Verizon Massachusetts ("Verizon") to respond to Information Requests ATT-VZ 1-1, 1-2(a), and 1-3. These requests seek information about the carriers who list numbers in the E911 database and the services those carriers provide. Alternatively, AT&T moves to strike the testimony of Robert Mudge and William E. Taylor to the extent that these Verizon witnesses rely on listings in the E911 database in order to support Verizon's claim that sufficient competition exists to warrant the removal of price regulation.

**Argument**

**I. AT&T IS ENTITLED TO INFORMATION WHICH VERIZON RELIES UPON TO JUSTIFY ITS ALTERNATIVE REGULATION PLAN**

On August 10, 2001, AT&T requested that Verizon identify the carriers which provide listings to the E911 database and the types of service provided by those carriers. *See* ATT-VZ 1-1 and 1-2(a), attached at Tabs 1 and 2 respectively. On August 20, 2001, Verizon filed its

response objecting to these two requests on the ground that the requested data are the proprietary information of the CLECs who provide listings to the E911 database. AT&T also requested that Verizon state whether a telecommunications provider in three hypothetical situations is required to register a telephone number in the E911 database. *See* ATT-VZ 1-3, attached at Tab 3.

Verizon objected to this information request on the ground that the request seeks a legal opinion as to the interpretation of statutes and rules setting forth the requirements for carriers to list telephone numbers in the E911 database.

As the incumbent local exchange carrier, Verizon manages the E911 database and is the only party in this proceeding who has access to all the information contained in the E911 database. In its testimony, Verizon takes advantage of its knowledge of the E911 database to support its claim that sufficient competition exists to justify deregulation. Verizon now refuses to provide AT&T with the basis for the E911 numbers Verizon propounds, while at the same time Verizon seeks to use these numbers to make assumptions about competition in Massachusetts markets. Verizon should not be allowed to rely on E911 database information when it refuses to provide the basis for this reliance, especially when no party, with the exception of Verizon, has access to the E911 database. Indeed, the irony of Verizon's conduct here should not be lost on the Department: Verizon is refusing to provide information it exclusively has by virtue of its position as the incumbent local exchange carrier at the same time that it seeks to use that information to demonstrate that it does not have market power as the incumbent local exchange carrier.

The information requested in ATT-VZ 1-1, 1-2(a) and 1-3, namely, which carriers list numbers in the E911 database and the types of services those carriers provide, is essential for the assessment of the competitiveness of CLECs in the Massachusetts markets. Verizon uses the

E911 database numbers to support its claim that CLECs provide a total of 851,000 customer lines and that 470,000 of those lines were provided through the use of CLEC facilities exclusively.<sup>1</sup> Verizon's non-responsiveness prevents AT&T and other CLECs from evaluating both the accuracy of these figures and their significance. Only with data on the size, capabilities, and services provided by the CLECs listed in the database can an assessment be made of Verizon's reliance on these numbers to support its proposal for deregulation. Verizon's objection to these requests ensures that AT&T and other CLECS never obtain this information because, by not providing the names of the carriers listed in the E911 database, AT&T and other CLECS cannot identify the carriers from whom to gain authorization for the release of this information. Verizon must answer AT&T's discovery requests, or Verizon should not be allowed to rely on information from the E911 database as evidence to support its Alternative Regulation Plan.

In addition, Verizon's objection to ATT-VZ 1-3 is contradictory to its statement in AG-VZ 2-5(e): "Verizon MA's practice...is to list in the E911 database any service that could originate a telephone call. DID services cannot generate outgoing calls and are not typically listed in the E911 database by Verizon MA." (AG-VZ 2-5 is attached at Tab 4.) Verizon has effectively provided a "legal opinion" as to the requirements for listing a number in the E911 database. Verizon cannot now claim it will not offer such an "opinion" when Verizon must respond to another party's discovery. Verizon must not be allowed to use the information it has by virtue of being the manager of the E911 database to support its arguments (*i.e.*, "the total [full facilities-based] lines may be understated [in the E911 database] if a customer has multiple lines

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<sup>1</sup> See Testimony of Robert Mudge, D.T.E. 01-31, at 12.

but only one E911 listing”<sup>2</sup>), while at the same time denying information on the E911 database to AT&T and other CLECs.

**II. ALTERNATIVELY, THE TESTIMONY OF ROBERT MUDGE AND WILLIAM E. TAYLOR SHOULD BE STRICKEN BECAUSE VERIZON CANNOT SUPPORT ITS USE OF THE E911 DATABASE TO JUSTIFY DEREGULATION AND THE E911 DATABASE IS NOT AN ACCURATE INDICATOR OF MARKET SHARE**

As stated above, the list of the carriers providing numbers to the E911 database and the services provided by those carriers are essential to the assessment of Verizon’s claim that sufficient competition exists to justify pricing flexibility. Without this information, the testimony of Mr. Mudge and Dr. Taylor which relies on the listings in the E911 database is meaningless and must be stricken.<sup>3</sup>

In addition, AT&T has reason to believe that any use of data from the E911 database to demonstrate competition in the Massachusetts markets is a useless endeavor. As Verizon itself points out, the numbers from the E911 database may not accurately represent the amount of actual lines because “the total lines may be understated if a customer has multiple lines but only one E911 listing (*e.g.*, a PBX with one main listed number).” *See* Testimony of Mudge, at 12. Likewise, the numbers in the E911 database can be skewed in the other direction by the inclusion of wireless and special access lines. In this way, the number of full facilities-based lines could be either too high or too low and, therefore, is not a reliable measure of market share and should not be relied upon to prove the need for deregulation.

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<sup>2</sup> *See id.*

<sup>3</sup> *See id.*, and Testimony of William E. Taylor, D.T.E. 01-31, at 8.

## **Conclusion**

For the reasons stated above, AT&T respectfully requests that the Department grant AT&T's motion to compel discovery responses to ATT-VZ 1-1, 1-2(a) and 1-3. In the alternative, AT&T requests that the Department strike the testimony of Robert Mudge and William E. Taylor to the extent that they rely on the use of the E911 database to support Verizon's Alternative Regulation Plan.

Respectfully submitted,

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